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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

18 Cr. 820 (JSR)

5 CESAR ALTIERI SAYOC,

6 Defendant.

7 -----x

8 August 5, 2019
9 2:00 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the
16 Southern District of New York

BY: JANE KIM

17 EMIL J. BOVE, III

JASON A. RICHMAN

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20 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

BY: IAN H. MARCUS AMELKIN

21 SARAH J. BAUMGARTEL

22 AMY GALLICCHIO

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(Case called)

THE DEPUTY CLERK: Will everyone please be seated and will the parties please identify themselves for the record.

MS. KIM: Good afternoon, your Honor. Jane Kim, Emil Bove, Jason Richman, and Samuel Adelsberg for the government, and with us at counsel table are Special Agents Keely McCarthy and Joseph Capaccio. Also in the courtroom are FBI explosive expert Kevin Finnerty and chemistry expert Christine March, who are available for the Court's questions.

THE COURT: Thank you very much. Good afternoon.

MR. MARCUS-AMELKIN: Good afternoon, your Honor. Ian Marcus-Amelkin of Federal Defenders of New York. With me at counsel's table is Sarah Baumgartel, an attorney in our office, our client Mr. Cesar Sayoc, Amy Gallicchio, another attorney in our office, Rheem Brooks, who is our paralegal supervisor, and Duncan Hosie, who is a summer intern in our office.

Also present in the courtroom are Dr. Harrison Pope who is from Harvard University, an expert on steroids and psychiatry; Dr. Michael First, who is a psychiatry expert as well from Columbia University, and Mr. Dale Mann from ESI who wrote our chemical report, and they're available if the Court has questions.

THE COURT: Very good.

So, the first thing we need to do is deal with the calculation of the sentencing guidelines and also any

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1 objections to the presentence report. The probation office has
2 calculated the total offense level as 43 and the Criminal
3 History Category as VI, which leads to a guideline range which
4 is not binding on the Court but which the Court will consider,
5 of lifetime imprisonment plus 10 years. I am always intrigued
6 by -- I understand that is a function of how the statutes act
7 but while I knew that the government's power and the Sentencing
8 Commission's power was great, I did not realize until now that
9 it goes after life. So, I hope the angels are listening to the
10 guidelines.

11 So, in any event, any objection to that from the
12 government?

13 MS. KIM: No, your Honor.

14 THE COURT: Any objection from the defense?

15 MR. MARCUS-AMELKIN: No, your Honor.

16 THE COURT: Now, there were two objections to the
17 report that were raised by the defense. First, with respect to
18 paragraph 77 of the report, the presentence report. It states,
19 among other things, that Mr. Sayoc planned his attacks several
20 months in advance. The specific sentence is, *"In subsequent*
21 *searches of Sayoc's computer and telephone, agents learned that*
22 *Sayoc planned his attack several months prior to his arrest."*

23 That's my understanding of the evidence as well but
24 let me hear from defense if you disagree.

25 MR. MARCUS-AMELKIN: We will withdraw the objection,

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1 your Honor. I think that the word "planning" is a generous for
2 Mr. Sayoc's actions, but there is certainly evidence that he
3 was thinking about something in advance of doing it.

4 THE COURT: All right.

5 And then the second objection was to a statement that
6 was originally in paragraph 79 that dealt with the potential
7 for injury and that was reworded, at the government's
8 suggestion, to read: *Because of the explosive materials used,*
9 *there was a potential for an injury to the intended targets,*
10 *mail carriers, and any other persons who handled, opened, or*
11 *were in the vicinity of those packages.*

12 Is there still objection to that?

13 MR. MARCUS-AMELKIN: We are comfortable with the
14 rewording, your Honor.

15 THE COURT: All right. Very good.

16 Any other objections, from either side, to the
17 presentence report?

18 MS. KIM: No, your Honor.

19 MR. MARCUS-AMELKIN: No, your Honor.

20 THE COURT: Then I will adopt the presentence report.

21 The next thing I think would be to turn to are the
22 various expert reports and I guess the first one I wanted to
23 clarify or at least get, ask some questions about, is the very
24 full and interesting report from Agent Finnerty. So, if he is
25 here, maybe he will come on up here.

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1 KEVIN D. FINNERTY,

2 THE DEPUTY CLERK: State your name and spell it slowly
3 for the record.

4 THE WITNESS: Kevin D. Finnerty. And the last name is
5 spelled F, as in frank, I-N-N-E-R-T-Y.

6 THE COURT: So, Agent Finnerty, thank you for being
7 here.

8 In your report, at page 24, out of the modest 107
9 pages you state that, *"The devices would not have functioned as
10 a result of their design. The fusing system for each device
11 lacked the proper components and assembly to enable it to
12 function as a method of initiation for these devices. It
13 cannot be determined if the non-functional fusing system is a
14 result of poor design or the intent of the builder."*

15 So, do I understand from that and from the rest of
16 your report that it was highly unlikely that these bombs would
17 explode?

18 THE WITNESS: It would not have worked with the design
19 that the individual put into those bombs.

20 THE COURT: Okay. So, the government seems to suggest
21 in some of its submissions that there was still a remote risk
22 that the bombs might explode. Maybe I am misunderstanding
23 that. But, if that were their position, you would not agree
24 with that?

25 THE WITNESS: No. There is a remote chance but not

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1 from the fusing system.

2 THE COURT: What would be the remote chance from?

3 THE WITNESS: The remote chance is handling. And also
4 when you do disassemble it, because of the explosives you have
5 a heat shock friction, there is a risk to removing and
6 disassembly.

7 THE COURT: I see. Okay.

8 Any other questions for Agent Finnerty?

9 MS. KIM: Yes, your Honor. If I could just ask a
10 couple?

11 Agent Finnerty, during the course of your career, have
12 you worked with other IEDs containing low order explosives?

13 THE WITNESS: Low explosives? Yes, I have.

14 MS. KIM: And, do you know of instances where those
15 explosives have in fact detonated?

16 THE WITNESS: In the field? Yes, I do.

17 MS. KIM: If you recall, could you please provide us
18 with some details as to some of those circumstances?

19 MR. MARCUS-AMELKIN: Objection, your Honor.

20 THE COURT: Sustained.

21 MS. KIM: Just to clarify for the record, the 16 IEDs
22 that you analyzed in connection with this case, were they
23 capable of exploding?

24 THE WITNESS: Yes, they were.

25 MS. KIM: And why were they capable of exploding?

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1 THE WITNESS: Because you have a low explosive or
2 energetic material that has been placed into a sealed container
3 and through the handling of those, the risk that I just spoke
4 about, the heat shock friction; any of those could occur during
5 disassembly or mishandling.

6 MS. KIM: And if even one of these IEDs had exploded,
7 could people have been injured?

8 THE WITNESS: Yes.

9 MS. KIM: And how do you know this?

10 THE COURT: Sustained.

11 MR. MARCUS-AMELKIN: Thank you, your Honor.

12 THE COURT: Counsel --

13 MS. KIM: Could I just ask one more question, your
14 Honor?

15 THE COURT: One.

16 MS. KIM: Could you please explain what, if any,
17 render safe procedures Quantico used for these IEDs?

18 THE WITNESS: Yes.

19 All of our render safe procedures follow the remote --
20 basically, we don't touch and we have a disassembly facility.
21 And these devices were transported to Quantico, eight of them,
22 fully in tact. They were removed by a robot, placed into our
23 disassembly facility, and a robot takes them apart for us.

24 MS. KIM: Nothing further, your Honor.

25 THE COURT: Anything from the defense?

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1 MR. MARCUS-AMELKIN: No, your Honor.

2 THE COURT: Thank you so much. You may step down.

3 Now, we also had a report from the defense, I think if
4 I understand it Mr. Mann was the primary author of this report.

5 MR. MARCUS-AMELKIN: That's correct, your Honor. He
6 is present in the courtroom.

7 THE COURT: So, yes, if he would come forward?

8 DALE MANN,

9 THE DEPUTY CLERK: State your name and spell it slowly
10 for the record.

11 THE WITNESS: My name is Dale Mann. Last name is
12 spelled M-A-N-N.

13 THE COURT: So, Mr. Mann, thank you for coming here.

14 Agent Finnerty, as I understand it from his report and
15 from his testimony a minute ago, indicated that on the one
16 hand, as designed, these bombs were not designed to explode or
17 at least they would not -- the fusing system would make them
18 inoperable but that there was still, for other reasons
19 independent of the design, at least a possibility that they
20 might explode.

21 Do you agree or disagree with that?

22 THE WITNESS: Only in the broadest sense would I agree
23 with that.

24 THE COURT: Okay. Well, give me a narrow sense then.

25 THE WITNESS: These devices were charged with both

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1 inert materials and what we term energetic materials, and there
2 was no way of knowing from the analysis what the percentage of
3 the two components -- class of components would be. And any
4 mixture that contains a low level of reactive materials, that
5 reaction is obviously mitigated by the presence of large
6 amounts of inert materials so we don't know how reactive that
7 total mixture might be, even though we do all agree that there
8 are some energetic particles present. Let me give you a couple
9 of examples.

10 Fireworks are shipped all over the country, all over
11 the world, millions upon millions of devices shipped. The same
12 type of materials that are found in these devices, they're not
13 particularly reactive to shock, temperature, or other types of
14 disturbance from shipping them. In fact, part of the analysis
15 at the FBI was the grinding up of these particles for further
16 analysis, which is an extreme example of friction, and there
17 was no reaction.

18 So, in those types of initiation events, the material
19 that's in these devices are negligibly reactive. So, I can
20 never say never that they wouldn't react, but under almost
21 every conceivable circumstance I would not expect them to.

22 THE COURT: Any questions for Mr. Mann?

23 MR. MARCUS-AMELKIN: No, your Honor.

24 MS. KIM: No, your Honor.

25 THE COURT: Very good. Thank you so much. You may

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1 step down.

2 THE WITNESS: Thank you.

3 THE COURT: Now, we also received two psychiatric
4 reports from the defense, one is from Dr. Pope. Is he here?

5 MR. MARCUS-AMELKIN: Yes, he is, your Honor.

6 THE COURT: If we could bring him up to the stand?

7 MR. MARCUS-AMELKIN: Absolutely.

8 HARRISON G. POPE, JR.,

9 THE DEPUTY CLERK: State your name and spell it slowly
10 for the record.

11 THE WITNESS: Dr. Harrison G. Pope, P-O-P-E, Jr.

12 THE COURT: So, Dr. Pope, thank you for being here. I
13 understand you have spent a great deal of your career at
14 Harvard but I will disregard that unfortunate consequence.

15 You talk, in your very interesting report, about how a
16 excess of steroid use such as allegedly was the case in
17 Mr. Sayoc's situation, can lead to feelings of invincibility
18 and obsessiveness and things like that. Exactly, if can you
19 explain it to a simple-minded Judge, how did the steroids cause
20 that effect?

21 THE WITNESS: Science still does not know the exact
22 biological mechanism in the brain that causes it. We do know
23 that it is some type of biological mechanism and cannot be
24 explained purely by social factors or personality factors or
25 expectational factors. The reason that we know that it is

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1 biological is that steroids have been tested in so-called
2 double-blind studies where neither the recipient nor the
3 investigator knew whether he was getting the genuine steroid or
4 inert placebo, and even under those conditions these effects
5 have been demonstrated.

6 THE COURT: And from what you were shown about this
7 particular defendant, do you think that that was plausibly what
8 was operating in his case?

9 THE WITNESS: Yes.

10 THE COURT: Why do you think that?

11 THE WITNESS: Because there is -- first, because we
12 know that he was getting substantial doses of steroids because
13 we actually have an interview performed of the drug dealer who
14 sold the steroids to him somewhat earlier, and because the
15 nature of the effects that he described has a characteristic of
16 stereotypical quality that I have witnessed numerous times when
17 people get these types of reactions to anabolic steroids. In
18 addition, we have the fact that prior to the time that he was
19 using this very large dose of steroids, he had no comparable
20 instances of behavior even approaching the magnitude of what
21 happened at this time. And, in the interval since that time,
22 again, he has reverted back to his pre-morbid personality.

23 So, to a reasonable medical certainty, this --

24 THE COURT: I always worry when I hear that, "a
25 reasonable medical certainty." What my high school biology

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1 teacher taught me was that nothing is certain, even in science.

2 THE WITNESS: No, you are quite correct. But, barring
3 a definitive scientific demonstration of the biological
4 mechanism, we still do not know.

5 THE COURT: All right.

6 Any questions for Dr. Pope?

7 MR. MARCUS-AMELKIN: No, your Honor.

8 MS. KIM: No, your Honor.

9 THE COURT: Thank you very much.

10 Finally, there was a report from Dr. First. Is he
11 here?

12 MR. MARCUS-AMELKIN: Yes, he is, your Honor.

13 THE COURT: Have him come up, please.

14 MICHAEL B. FIRST,

15 THE DEPUTY CLERK: State your name and spell it slowly
16 for the record.

17 THE WITNESS: Michael B. First. F-I-R-S-T.

18 THE COURT: So, Dr. First, thank you for being here.

19 I notice in your report you also use the term "a
20 reasonable degree of medical certainty." I won't give you a
21 hard time on that, I will just disregard it. But, it is your
22 opinion, as I understand it, that Mr. Sayoc suffered from a
23 severe personality disorder that likely contributed to the
24 behavior we are dealing with here; is that right?

25 THE WITNESS: That's correct.

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1 THE COURT: Could you elaborate on this a little bit?

2 THE WITNESS: Well, as Dr. Pope was talking about, one
3 of the main factors that led up to this was this overuse of
4 steroids and, as with every case, that's a strong biological
5 component but there is a strong psychological component as
6 well -- his predisposition to be paranoid, that's an example of
7 a personality disorder; his sense of disconnection; his
8 impulsivity. Lots of aspects of his personality interacted
9 with life events and the underlying biology of the steroids, to
10 lead to this act. And if any piece were missing, if he weren't
11 taking steroids this probably wouldn't have happened. If he
12 didn't have this life trajectory it probably wouldn't have
13 happened. So, it is the combination of the two that helps
14 explain what happened.

15 THE COURT: Do you have an opinion -- I don't know
16 whether you said anything about this in your report but do you
17 have an opinion whether he intended these devices to go off and
18 just poorly designed them, or whether he did not intend them to
19 go off? Or, something else?

20 THE WITNESS: My understanding is that he -- his
21 intention was to make a statement and to scare people to try to
22 say, *you have to watch out what you are doing*, but there was
23 never, at least from what he told me and it seemed very
24 credible, there was absolutely no intention of this going off.

25 THE COURT: You base that primarily on what he said to

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1 you?

2 THE WITNESS: Yes.

3 THE COURT: Any questions for Dr. First?

4 MS. KIM: No, your Honor.

5 MR. MARCUS-AMELKIN: May I ask one, your Honor?

6 THE COURT: Yes.

7 MR. MARCUS-AMELKIN: Dr. First, if the Judge accepts
8 our recommendation and sentences Mr. Sayoc to about 10 years in
9 prison, do you think when he is released he can be safely
10 managed in the community and, if so, what recommendations would
11 you have to ensure that?

12 THE WITNESS: I do feel that he could be safely
13 managed. First of all, obviously a very important component is
14 not to be on the steroids because that was one of the critical
15 elements. So, you can do random drug testing. Plus, his life
16 circumstances have changed now. One the factors that caused
17 him to take steroids in the first place was his profession; he
18 needed that to be a bouncer. In fact, he escalated his steroid
19 use because the jobs he had in the last couple of years
20 required him to be bulked up. And, the self-esteem that he
21 derived from the steroids and his need for that, that has also,
22 as he gets older, less so. But, a very important factor is he
23 has never gotten any treatment whatsoever.

24 When he came into MCC and I met him the first time, he
25 knew I was a psychiatrist because it was explained to him I was

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1 a psychiatric expert but he was begging me to help treat him.
2 I had to explain to him that's not why I am here. But, he
3 actually saw -- he said to me in the very beginning, this is my
4 first chance to really deal with a lot of the bad things that
5 have happened to me. He is very, very open and eager to try to
6 understand what happened and be able to control his impulses.
7 That's one of the most important prerequisites for people
8 responding to psychotherapy, is the motivation to change, and I
9 think that everything that he has gone through, including the
10 time is he going to spend incarcerated, is a very strong
11 motivation for him to change.

12 So, I think when he is released, he would need to
13 be -- I am hopeful he will be lucky enough to be in a facility
14 where there will be some kind of psychology support to at least
15 begin to work through some of these issues. But, outpatient
16 psychotherapy would be my absolute recommendation.

17 And plus, just to be sure, I suspected after all of
18 this, his inclination to go back on the steroids -- because he
19 is completely aware now of the negative effect -- is probably
20 low but, with all drug cases, random testing would be
21 recommended as well.

22 THE COURT: Thank you very much. You may step down.

23 All right, I think with that background, which was
24 very helpful and I appreciate all the experts being here, I am
25 now ready to hear from counsel.

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1 The range in which the Court may sentence Mr. Sayoc is
2 very broad; there is a mandatory minimum of 10 years, there is
3 a maximum of life imprisonment plus 10 years, and so that's a
4 wide range and the Court will, of course, be guided by all the
5 factors under Section 3553(a) of Title 18.

6 So, let me hear first from defense counsel and then
7 from government counsel and then from the defendant, if he
8 wishes to be heard.

9 MR. MARCUS-AMELKIN: Thank you very much, your Honor,
10 and thank you for asking our experts those questions.

11 First I would like to note, and thank Mr. Sayoc's
12 family who is present in the courtroom. His mother and sister
13 are here and they are thankful to the Court for making
14 arrangements to have them be present.

15 I think the Court has two questions to answer. The
16 first is does this mentally ill man, who did not physically
17 injury anyone, deserve to die in prison. We believe that the
18 answer to that is no.

19 THE COURT: Well, he created, did he not, a climate of
20 fear and terror going on, day after day, for several weeks?

21 MR. MARCUS-AMELKIN: We both recognize that and also
22 believe that it was not his intention to create a mass
23 hysteria. He was honestly shocked that any news covered it and
24 I think that it is important, as I lay out his life, to
25 recognize that at the time he committed this offense he was not

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1 thinking rationally and he was quite mentally ill. And, given
2 those two things, when we look at the 3553(a) factors --

3 THE COURT: He wasn't insane. There hasn't been any
4 claim here of an insanity defense, correct?

5 MR. MARCUS-AMELKIN: That is correct, he was not
6 insane, but his history and characteristics and his diminished
7 mental health and cognitive challenges, I think, are all
8 relevant and important to understand his way of thinking at the
9 time that he put these things into the mail.

10 So, if the Court agrees that life is not appropriate,
11 the second question is given his age, given the mitigating
12 factors that we presented in our submission, given the 3553(a)
13 factors, is any additional time over our recommended sentence
14 to the Court necessary to meet the goals of sentencing?

15 THE COURT: I'm not sure I understand the argument
16 about age. Sometimes the argument is made that because people
17 beyond the age of 35 or so are less likely to commit new crimes
18 that they've committed when they were 16 or whatever --

19 MR. MARCUS-AMELKIN: Right.

20 THE COURT: -- that it is inappropriate to imprison
21 them beyond that age. This is not that kind of situation; he
22 committed these crimes when he was in his 50s.

23 MR. MARCUS-AMELKIN: That's correct, your Honor.

24 THE COURT: So, if I were to -- if, theoretically, the
25 right sentence for him under all the relevant factors was X,

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1 why shouldn't that be the sentence whether he is 40, 50, 60 or
2 whatever?

3 MR. MARCUS-AMELKIN: I think there is a couple answers
4 to that. The first is that social science says it continues to
5 drop as you get older and older so some people who are on VOSRs
6 in their 50s, there was small percentage but there were none
7 once you got up into the 70s.

8 So, I think the fact that no matter what he is going
9 to be in prison into his late 60s is relevant to the fact that
10 his age is an important consideration and it is one that the
11 Sentencing Commission now thinks about, it is one that Congress
12 asks the Courts to think about. It is one of the components of
13 the First Step Act that now, after a certain age, the Court can
14 grant compassionate release to somebody who they sentenced to a
15 long period of time. And I think it is because we recognize
16 that as a person becomes older, they become far less likely to
17 commit crime. But I think that the other --

18 THE COURT: Forgive me, but that doesn't seem to fit
19 his profile. He committed petty thefts when he was younger.
20 He had one situation where he made a verbal bomb threat over
21 the phone to the electric company but he got much worse in
22 terms of what he did as he, perhaps because of steroid use or
23 whatever, gets into his 50s and then he commits these much more
24 egregious acts. So, one would think that on that theory the
25 line is going up and we should lock him up forever.

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1 MR. MARCUS-AMELKIN: I think not for a number of
2 reasons but I think it is important to note that leading up
3 into this event his life had deteriorated significantly as
4 compared to even how it was just a decade before. I mean, the
5 Court saw pictures of how he was living. It was a very cramped
6 van, this old mattress, very dirty; his clothes warding him off
7 from the sun. He, after his grandparents passed away, his
8 relationship with his family also somewhat fractured. And
9 then, during the time period leading up to the offense, as
10 Dr. Pope explains, he was experiencing what's called a slow
11 boil. And I will get into that as I go through his history,
12 but I think that we don't view this as, oh, his behavior became
13 more serious as he got older and he was graduating through
14 crime. This is not one of those instances. I am sure the
15 Court, over the years, has seen the hand-to-hand drug dealer
16 move up to the middle man, move up to the kingpin, and then the
17 government says he has escalated his criminal behavior.
18 Everything in this gentleman's life prior to this offense
19 resulted in no jail time. In fact, of all the offenses that he
20 was charged with, I believe only two of them actually resulted
21 in a conviction, a misdemeanor conviction. All the others were
22 adjudication withheld, which under Florida law is not a
23 conviction. Certainly, it counts under the guidelines. But,
24 he never had to admit to his guilt in these offenses.

25 I mean, spending a couple days in a county jail

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1 because you pick up some food or you make your age younger on
2 your license so you seem more attractive to employers is so
3 different from what happened here and it was just so out of
4 character for his life and the reason why you have to go all
5 the way back to the beginning, to some extent, because his
6 mental illness was kind of catalyzed by his early struggles in
7 life.

8 We have three major problems in his early life, the
9 first is his learning disabilities. He was born with cognitive
10 limitations, dyslexia. We have records --

11 THE COURT: However, if I am not mistaken he,
12 notwithstanding that, completed high school and even -- what --
13 a year or so of college?

14 MR. MARCUS-AMELKIN: No question. And I think that's
15 both a testament to the close-knit nature of his family and his
16 grandparents' guidance, the fact that he moved in with his
17 grandmother to help tutor him through high school. But, then
18 you will note he went to a junior college to play soccer. He
19 was good at soccer. They were a good team. But, he couldn't
20 make it through school for longer than a year. And then he
21 gets an opportunity to play in an even more prestigious
22 institution, to play at UCF, and on the week before classes
23 start he is so fractured and emotionally vulnerable and scared
24 that he had to go home and couldn't continue to play. And
25 then, his friends from Brevard gets bumped up to UNC Charlotte,

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1 they invite him to join the team there. Another opportunity to
2 get through school. But, without the structure of his
3 grandparents and his mom staying on top of him, he couldn't
4 make it there either. And although they were blurry, we
5 included for you the transcripts to see that. He really did
6 poorly. School was always a challenge and I think his sister's
7 letter, which says he was a low IQ person who was a dreamer,
8 had trouble making friends, the fact that newspaper reports --
9 look. I mean, the press did a lot of interviews down south and
10 so many people were like, *he is simple-minded, he is naive, I*
11 *can't believe he would have done this crime.* And I think that
12 it is no offense to Mr. Sayoc, he just has mental challenges
13 that he has struggled with his entire life and they made him
14 vulnerable.

15 He was more vulnerable after his father left the
16 family when he was young and it made him a target at the school
17 for this priest because he is this little kid, he stutters, he
18 has dyslexia, he has trouble making friends, and he was
19 sexually abused over the course of a year. Look. This is not
20 a situation where we say the abuse is so mitigating that it's
21 our main piece to the puzzle, but I do think that without the
22 abuse -- we do think without the abuse and Dr. Pope thinks,
23 that the steroids wouldn't have happened. Because he returns
24 to Florida, still a small kid, now a victim of these attacks,
25 he is little, he is still being bullied, and he starts taking

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1 steroids when he is like 15 years old which is off-the-charts
2 young in terms of when people start using anabolic steroids. I
3 mean, he most likely wasn't even through puberty yet. And
4 these steroids had a profound effect on his psyche. A profound
5 effect.

6 THE COURT: I always thought people didn't start using
7 steroids until they got a big contract to play in professional
8 sports.

9 MR. MARCUS-AMELKIN: Well, yes. Right? I mean --

10 And you see, just with those folks and Mr. Sayoc, that
11 there is a percentage of people where these things really mess
12 with your brain. And, studies show that men who use high doses
13 of steroids, it can cause a profound effect on your personality
14 and your mood and it will cause you to display aggressiveness
15 that is entirely different from your normal personality. Now,
16 that's important in this instance because we know from
17 interviews, from his family, that Mr. Sayoc, in general, was a
18 kind and caring guy. Even the people who worked at Ultra, who
19 he met in the height of his kind of steroid-induced delusion,
20 thought he was a good worker and pleasant to be around. They
21 weren't his friends, mind you; they thought he was odd and they
22 kept their distance from him, but they thought he was
23 professional and did a good job. And I think when you look
24 back at his youth and how he cared for his grandparents, his
25 mother's letter, *he fed them, gave them things to drink and he*

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sentence

1 washed them, and his cousin Kimberly Sayoc is really a far
2 family acquaintance who didn't know Mr. Sayoc very well says
3 that after 20 years of not seeing him, he doted on her parents.
4 That when he spent time with them in Buffalo he did everything
5 he could to help them. And that's the kind of guy he was and
6 is. But this was juxtaposed with these mental health
7 challenges, these anxieties and other problems that made living
8 particularly hard.

9 And, as he got older -- and, Judge, he lost the
10 structure of his grandparents' home, he lost the structure of
11 school after basically flunking out, he becomes more withdrawn
12 and more mentally ill.

13 You know, he has a long work history. He is capable
14 of holding down a job. He worked in the service industry, he
15 worked in catering. You know about the exotic dancing. You
16 know about the failed dry cleaning business. And then, as an
17 adult, to be in his 50s and work full, like 12-hour days half
18 the day either bouncing or DJ-ing at a strip club and he is
19 delivering pizzas all night, this is a guy who wanted to work,
20 he was capable of work, but it was challenging for him. And in
21 the last 10 years --

22 THE COURT: He doesn't seem to have been able to keep
23 a job for very long.

24 MR. MARCUS-AMELKIN: Well, I think that there were
25 years when he kept them a year or two. He, with some of the

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sentence

1 pizza delivery folks he had been in and out with them for
2 years; two, three years. There was a lot of interviews of
3 employers. For the most part, they were all very positive that
4 we saw both in the FBI reports and in the news.

5 But, yes, I think that he did struggle and he, any
6 time he was required to take a leadership role or there was
7 extra thought involved, he struggled, especially the dry
8 cleaning business, the male revues. And, in the last 10 years,
9 he really hit rock bottom. He lost his home during the great
10 recession. He went bankrupt. He was financially desperate
11 which led to an uptick in these petty offenses, and in that
12 desperation he turned to a spiritual advisor where he is
13 lighting dozens of candles every week, spending like hundreds
14 of dollars on these candles where he works and works to get
15 money for candles to burn the candles in the hopes that his
16 luck will change. And, he was reading self-help books and, in
17 particular, the books by Donald Trump really resonated with
18 him.

19 Now, at the time of this offense this was a man who,
20 for the last 10 years, was lacking in friendships, strong
21 relationships with his family, any version of success. He
22 never had the real opportunity to be in a long, committed,
23 loving relationship, ever be married in a real way other than a
24 fling when he was young; have children. He is living there
25 alone in that van and it makes sense because as Dr. First

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sentence

1 explained, his psychological issues caused such significant
2 impairments in his occupational abilities, his social
3 abilities, and other important areas of functioning.

4 So, the steroid use and the mental health problems led
5 him to start more obsessional beliefs. He is using these
6 self-help books to cope, he loves the books, and he kind of
7 becomes obsessed with Donald Trump and he buys Trump-branded
8 suits, ties. He loves WWF wrestling which the President was
9 involved in before he became President. And you saw in the
10 settlement letter dated 2013 about his love of Trump. And then
11 the letter from Don Jones, his former attorney, who said he
12 looked up to the President as a father figure. And he starts
13 getting involved in politics because of that.

14 He was watching Fox News and joins, basically, what is
15 this pro-Trump movement and in that he ramps up his social
16 media involvement. He is posting about politics, he is reading
17 these conspiracy theories. We only gave the Court a small
18 sampling of some of the stuff he was reading but he was exposed
19 to a lot of hateful ideas, conspiracy theories, misinformation.
20 And, because of his cognitive limitations and his mental
21 health, he didn't really have the capacity to critically
22 evaluate the information and he slowly became deranged by it.
23 You have seen this in his social media postings which I think
24 he will tell you, when he reads now, he can't believe that was
25 what he was writing and his beliefs that democrats were hurting

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sentence

1 this country and trying to attack him personally.

2 Now, this is what Dr. Pope refers to as the slow boil.
3 Some men who abuse steroids develop a chronic, obsessional
4 pre-occupation that they cannot get out of their heads and in
5 2018, leading up to this event, he was taking an extremely
6 large dose of steroids. He could not perceive his actions as
7 growing more grossly abnormal. He became pathologically
8 obsessed with the perceived actions of certain democratic
9 leaders. You saw in the submission he is writing long lists of
10 all their names, he is going to Lisa Massa, burning all of
11 these candles, he is custom printing all of these decals and
12 putting them on the van. But, he also felt victimized because,
13 as he became more engaged, the stickers on his van made him a
14 target for harassment and his van was vandalized and these
15 incidents validated his paranoia and caused him to become more
16 withdrawn.

17 (Continued on next page)

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Sentence

1 MR. MARCUS-AMELKIN: Now, we believe that the
2 President's rhetoric contributed to Mr. Sayoc's actions in this
3 offense. The government doesn't mention the President in their
4 opening brief, and we understand their hesitancy. They are
5 part of the Executive Branch. They answer to the President.
6 The President appoints the United States Attorney. He serves
7 at the President's leisure. But for the government to say that
8 millions of people have strong views and that only Mr. Sayoc
9 acted criminally is simply false. They say that in their reply
10 brief.

11 Studies have shown that after a Trump rally comes into
12 a county, there is over 226 percent increase in reported hate
13 crimes. Right-wing extremists were linked to at least 50
14 extremist-relate murders in the U.S. in 2018. The most in any
15 year since 1995 in Oklahoma City. At his rallies, the
16 President has encouraged or at least condoned chance of
17 threatened violence.

18 THE COURT: Well, you haven't presented me that I
19 recall in any of those studies.

20 MR. MARCUS-AMELKIN: I am happy to pass that up, your
21 Honor.

22 THE COURT: As I have learned from long experience,
23 studies of that nature are very difficult to construct in a
24 rigorous fashion because there are so many other factors
25 involved that it is very difficult for any responsible social

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Sentence

1 scientist to isolate meaningfully any particular figure.
2 Correlation and causation are two very different things as the
3 cliché would have it and correctly so.

4 So I am wondering whether this is bit of a side issue.

5 MR. MARCUS-AMELKIN: I understand. I will just note
6 that first study was cited from the Washington Post on
7 March 22nd, 2018. I can pass up the materials if the Court is
8 interested.

9 I would note just taking a step back and why this is
10 important is because of Mr. Sayoc's mental illness this type of
11 rhetoric deeply affected him because he so greatly admired the
12 President. It is impossible, I believe, to separate the
13 political climate and his mental illness when we're talking
14 about the slow boil and his obsessional beliefs.

15 THE COURT: Let's take everything you have just said
16 as undisputed, but I think it will be in part disputed in a
17 minute. So just accepting it for the moment.

18 MR. MARCUS-AMELKIN: Right.

19 THE COURT: I have to look at a whole bunch of factors
20 under Section 3553(a). I have to look at the nature of the
21 offense, which was by any measure terrible. I have to look at
22 the deterrent effect. Yes, I understand that the argument or
23 the opinion of Dr. First that he is unlikely if he goes onto --
24 I think steroids was a big part of this. Both doctors agreed
25 to that. And if he is on steroids, Mr. Hyde becomes

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Sentence

1 Dr. Jekyll.

2 Again, I also have to look at general deterrence. I
3 have to look at just punishment, etc. So what about all that?
4 Assuming everything you have just said, how far does it cut?

5 MR. MARCUS-AMELKIN: I think I have plenty to say
6 about all of that, but the main thing I want to say is this:
7 10 years is not a slap on the wrist. We combed the country for
8 similar cases. It is in line I think with similarly situated
9 defendants. It is long enough to punish him. It's long enough
10 to deter him.

11 First off, you will hear from him. He is individually
12 deterred. He is very, very sorry and very, very ashamed.
13 Studies say as to general deterrence it is the fact that you
14 will be caught and prosecuted and punished that is far more
15 deterring than it is how long you are going to give a person in
16 jail. Mr. Sayoc was caught so quickly and so effectively I
17 think it shows to people that if you are going to try a stunt
18 like this, you are going to pay severely.

19 I don't think anybody in this room wouldn't think
20 about 10 years -- all of your time in college, all of your time
21 in law school, you clerked for judges -- as a very long period
22 of time and not being a significant portion of your life.

23 THE COURT: Well, law school admittedly is cruel and
24 unusual, but he wasn't subjected to that.

25 MR. MARCUS-AMELKIN: Right. You and I were, your

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Sentence

1 Honor.

2 I think that you have to put these devices in the
3 framework of our sentencing structure. If you give life in a
4 case like this, it does not allow for greater punishment for
5 far worse conduct. Not a single person was injured here. It
6 scary and this was serious. We all agree. Mr. Sayoc agrees.
7 But a bomb sent in the mail goes off or designed to go off,
8 which this was not, where people are injured or somebody dies
9 or a lot of people die, that's an appropriate time to consider
10 a life sentence under our sentencing structure; but these
11 devices were not functioning and the chances of them injuring
12 anyone was remote.

13 The parties agree that they had energetic material.
14 We are not arguing about that. It seems that there is
15 disagreement about how likely they were to hurt anyone, but you
16 heard from Mr. Finnerty. This all comes down really to a
17 question of chemistry, but we have a lot of information. None
18 detonated. None sparked or caught fire in the mail stream.
19 These things were in the mail -- several of them -- for a
20 significant period of time.

21 THE COURT: The question is whether that was because
22 he just poorly designed them or because he did not intend, even
23 in the angry state he was in, to actually have them explode. I
24 think the government points out that he was studying how to
25 build these things for some time.

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Sentence

1 MR. MARCUS-AMELKIN: Well, we take issue with this.
2 He watched one YouTube video.

3 If you have a zero out of a hundred on a test, you are
4 trying to get all the questions wrong; right? Like, if you are
5 just guessing, you are going to get 50 percent.

6 Everything was wrong with these devices. Everything.
7 The fact of the matter is you are using solder wire, which
8 cannot heat the mixture. You are not attaching that solder
9 wire to any igniter. The clock, which is purchased at a swap
10 shop, still has the plastic numbers written on it and most if
11 not half of the batteries are dead and the wires are not
12 connected to the batteries. And you are putting a sticker of
13 the ISIS flag and the person who is being attacked with a big X
14 over their face. These things were designed to be opened and
15 scare the crap out of you. Because if you put them in the mail
16 in south Florida and they are going up here and you expect that
17 they are going to blow up at a certain time, you have no idea
18 when that is going to happen.

19 More to the point, beyond all that --

20 THE COURT: But why should I, assuming again for the
21 sake of argument everything you just said in the last minute or
22 two, credit your argument that he had no idea that this would
23 cause such fear and terror? More broadly you send an operative
24 pipe bomb to various high-level political figures intending --
25 if I understand your argument -- that they will react with

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Sentence

1 great fear and that it will be punishment for their wrongful
2 political views or deter them from future wrongful political
3 views or whatever it is the view was, how could he not realize
4 when you are dealing in that way with such high-visibility
5 figures it would send a current of fear throughout the country?

6 MR. MARCUS-AMELKIN: I think that he simply was not
7 thinking rationally and I think that he is a man living alone
8 in a van whose life is online to some extent and he is focused
9 on this these people as if almost he has a relationship with
10 them. He is angry at them for things that affected him
11 personally. Obviously they have no idea that his van was
12 vandalism or someone threw something at him or gave him the
13 finger. And he wanted to respond to these people who he felt
14 were the leaders of this resistance against him personally.
15 Now, that is not rational to me and I can't imagine that it is
16 rational to you, but I think he slowly realized with the source
17 device arriving and it being in the newspaper and seeing it on
18 TV, wow, this is a big deal.

19 Now, the government is right he did send a couple more
20 after that. I think that goes to his state of mind, that he
21 was in this slow boil of obsession. He was so focused and
22 ramped up that he just simply was not thinking clearly about
23 the ramifications of his actions. Because, you know, he is not
24 somebody standing here on principle today and saying, I did it
25 for the love of country and it was the right thing to do. He

J856SAYS2

Sentence

1 is really, really sorry and really afraid. I think that he is
2 afraid because he didn't realize just how serious this was
3 until the moment he was arrested or the moment he found out
4 that he is facing life in prison.

5 I think it was a slow progression, but it was also a
6 deescalation over the past months where the steroids left his
7 system, the tears of regret flowed freely and he is a different
8 person here today. Still mentally ill. Still with a lot of
9 things that need to be figured out, but no longer dangerous and
10 no longer boiling under the effects of steroids.

11 I think that his record at the MCC should give you
12 some comfort if you take our recommendation. Number one, he
13 pleaded guilty and did not go to trial. We knew that these
14 devices were bad. There were arguments to be made if he was to
15 proceed, but he took responsibility for his actions. He pled
16 guilty to 65 counts before this Court with the understanding
17 that he would be spending most of the rest of his life in
18 prison. Assuming that if he lived the life expectancy, he
19 might have less than 10 years left if he gets the sentence that
20 we're asking for.

21 He has dedicated himself to the MCC. His transcript
22 is incredible. Every single class he could possibly take he
23 has taken. Every activity he could do, he has done. He has
24 had no disciplinary records. There is also the added factor
25 that his family is now stronger and there for him in a way that

J856SAYS2

Sentence

1 they were not before. That is not an insult to his family. He
2 will admit to you freely that he was a difficult guy at the
3 times when he was on steroids and his mom wanted him to get
4 help and he didn't feel he needed it. Now he and his mom are
5 talking almost every day. He is talking to his sisters. He is
6 talking to old friends that he hasn't seen for a long time. I
7 think the fact that so many people showed up and put in letters
8 for him is indicative of these rebuilding of relationships.

9 Finally and the most important thing about the MCC and
10 his time since he has been arrested, is that this is a man who
11 was willing to get help. He wants it. He knows he needs it
12 and he is willing to take it. I think that wherever he gets
13 sent, he will continue to seek help. He will seek
14 psychological counseling. He will stay on the psychological
15 medication he has been prescribed. And when he gets home, he
16 will do the gold standard of supervised release, whatever the
17 Court wants, to stay safe and to stay in the community.

18 So altogether we're asking for 121 months. The
19 guidelines are not appropriate here. His history and
20 characteristics, he was mentally ill. He suffered terribly in
21 his life and he was not thinking clearly. We know from every
22 study that the elderly pose less of a risk to society. At 67
23 as gets older and older, he becomes less of a risk.

24 I look to the ultimate conclusions by both of our
25 experts. Dr. Pope opined that if Mr. Sayoc had not been using

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Sentence

1 steroids in 2018 the alleged offenses would -- the crimes --
2 strike alleged -- the crimes would not have happened. If he
3 stopped using, which he most certainly will, it is very remote
4 that he would ever commit a crime of comparable magnitude.

5 Dr. First, found that Mr. Sayoc was suffering from a
6 personality disorder with the effects of a steroid-introduced
7 mental disorder with manic like features. At the time he
8 committed these offenses and as the psychiatric changes caused
9 by his steroid use worked in concert with his maladapted
10 personality traits, like emotional ability and suspiciousness
11 caused him to act in a self-destructive way. You heard from
12 Dr. Pope and Dr. First that it is likely he will never -- I
13 know he will never use steroids again and he will be less of a
14 risk.

15 To the stature and circumstances of this crime, we
16 discussed it at length but I will just say again that a life
17 sentence does not give space for far less conduct. Functioning
18 bombs, injuries, death -- none of which were here. We have
19 provided dozen of similar cases. The government tries to parse
20 them, but there are a lot of pages of cases and I think the
21 Court gets the point on that.

22 Finally, he is truly sorry. He has accepted
23 responsibility and he can be safely managed in the community.

24 So for all of those reasons, your Honor, we ask that
25 you sentence him to a total of 121 months.

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Sentence

1 THE COURT: Thank you very much.

2 Let me hear from the government.

3 MS. KIM: Thank you, your Honor.

4 Your Honor, as the Court has said the defendant
5 created a climate of fear and terror across the country with
6 his conduct and he admitted as much on two occasions. He
7 admitted before the Court that he wanted to scare and
8 intimidate people.

9 I would like to start off by walking through very
10 briefly the timeline of the defendant's conduct in October. On
11 or about Wednesday, October 17th the defendant mailed his first
12 pipe bomb. The next day, October 18th, he mailed two more pipe
13 bombs. The next day, October 19th, he mailed three pipe bombs.
14 The next day, Saturday, October 20th, he mails three more pipe
15 bombs.

16 The following Monday, October 22nd, the defendant's
17 first pipe bomb is discovered at the residence of George Soros.
18 It makes national headlines and the defendant forwards the New
19 York Times article to 18 people. The next day, October 23rd,
20 the defendant mails two additional pipe bombs and the
21 defendant's second pipe bomb is discovered at the residence of
22 Hillary Clinton. Also on October 23rd, the defendant watches
23 television news from a store in Florida reveling in his conduct
24 and the national headlines that have been made from his
25 conduct. He searches for the addresses of two additional

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Sentence

1 victims in efforts to prolong his attack.

2 The next day, Wednesday, October 24th, five additional
3 IEDs are recovered and the following day, Thursday,
4 October 25th, the defendant mails two more pipe bombs and three
5 more pipe bombs are recovered. On October 26th, the defendant
6 mails yet another pipe bomb and four bombs are recovered and he
7 is arrested. Following his arrest, two additional pipe bombs
8 are recovered on October 29th and November 1st.

9 This was how the defendant's terrorist attack
10 unfolded -- 16 pipe bombs recovered across the country over the
11 course of 10 days.

12 In response to the defendant's terrorist attacks,
13 hundred of law enforcement officers were mobilized around the
14 country, thousands of postal employees were on alert for
15 suspicious packages, buildings and mail facilities were
16 evacuated, schools were ordered to shelter in place, and a
17 subway station in New York was temporarily closed.

18 The defendant's campaign of terror was national in
19 reach and extremely serious. The defendant is asking now for a
20 sentence of 121 months' imprisonment and that is wholly
21 insufficient. Essentially what that would mean would be that
22 the defendant would get less than one year for each of his pipe
23 bombs.

24 In terms of the capabilities of the defendant's IEDs,
25 the defendant has already admitted to the Court on two

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Sentence

1 occasions that first he packed the bombs with glass shrapnel
2 explosives and chemicals. These were materials that he
3 selected that could cause an explosion and/or injury. If he
4 had intended for these bombs to just be hoaxes, he could have
5 left them empty or he could have packed them with sand, but he
6 chose to put glass fragments into the bombs.

7 THE COURT: What do you make of the fact that, first
8 of all, your own expert, Agent Finnerty, in a very long and
9 detailed report concludes that it was unlikely to say the least
10 that these bombs would go off because of the various way they
11 were designed -- the clocks were not set, the wires were not
12 attached and things like that? So the fact that he put
13 menacing stuff in there made them a better hoax if you will,
14 but what reason is there to believe that he intended they would
15 actually go off?

16 MS. KIM: Your Honor, first the defendant has stated
17 on two occasions before this Court that he knew that the IEDs
18 were capable of exploding and he knew there was a risk of harm
19 to people and property. I don't think anyone doubts that the
20 fusing system here was not operable for any of the IEDs, but
21 the actual mixture within each pipe -- the mixture of pool
22 chemicals, the mixture of explosive material and mixture of
23 glass, that mixture was still capable of exploding. And even
24 if the likelihood of explosion was remote, these IEDs were
25 still dangerous. They were rendered safe either in the field

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Sentence

1 or they were transported down to Quantico in total containment
2 vessels because the FBI believed that they posed a danger.

3 We're not saying, your Honor, that these were the most
4 sophisticated bombs constructed, but certainly they did pose a
5 danger and they were handled.

6 THE COURT: So the explosives, as I understand it,
7 were made up of the same materials used in firecrackers and
8 alike. And as you heard from one of the defense experts, those
9 are routinely shipped all over the country without exploding.
10 It doesn't mean they don't have no potential of exploding. It
11 does happen, but it is a very rare circumstance.

12 Pieces of broken glass, certainly one doesn't put that
13 into a package of this sort with loving intentions, but those
14 are not the kind of thing that are likely by themselves without
15 an explosion to cause serious injury. And the chlorine, yes,
16 chlorine can cause burns; but chlorine is a product that is
17 routinely shipped all over the place without problems.

18 So I don't quite see why you think that he intended
19 the kinds of harm you are talking about. You recognize that as
20 he indicated in court that there was at least a possibility of
21 this happening, but what I am focused on is what was his most
22 likely intent. I am trying to find out whether you are saying
23 his intent was that these would go off, or his intent was not
24 or what.

25 MS. KIM: Your Honor, I think first there is a

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Sentence

1 distinction between mailing fireworks commercially and mixing
2 up the explosive material with pool shock. I am told that pool
3 shock can often result in what is called a hypergolic reaction,
4 which is a spontaneous reaction when mixed with other
5 chemicals. And I think the combination of all these components
6 within a contained pipe that allows for the gases and the
7 pressure to build up, I am told is very different than mailing
8 commercial grade fireworks.

9 THE COURT: That might be, but do you have any reason
10 to believe that he knew that? This is something you only know
11 because of how you got into it through the FBI expert in this
12 case. This is not a matter of common knowledge.

13 MS. KIM: Certainly, your Honor. I can point to two
14 things, your Honor. The first is that in 2016 he did start
15 searching how to create mail bombs and how to create pipe
16 bombs.

17 THE COURT: Forgive me for interrupting, but that's my
18 job.

19 The very fact that he started researching in advance,
20 which I accept and I think you have some good evidence of, does
21 that not show if he wanted to build a working pipe bomb, he
22 knew how to find out how to do it?

23 MS. KIM: I would point to two things, your Honor.
24 The first is that the defendant has already admitted that he
25 believed that the IEDs were capable of exploding.

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Sentence

1 THE COURT: Well, no. We have been through that.
2 Those were limited admissions in my court, and I don't think
3 that that means that he was ever saying that he thought that it
4 was likely that these were going to explode.

5 MS. KIM: I think, your Honor, the second indication
6 is that he as I mentioned earlier packaged these with
7 components that had the capacity to explode -- the shrapnel and
8 the explosive material. In terms of his research and whether
9 or not he had the ability to create a more sophisticated bomb,
10 the government would submit that the defendant's deficiencies
11 as a bomb maker aren't at this stage something that he should
12 benefit from at the time of sentencing.

13 We'd also note that at the plea proceeding and in a
14 subsequent proceeding, the defendant admitted that he believed
15 or he knew that there was a risk that the bombs could hurt
16 people and property. As I said earlier, your Honor, these may
17 not have been the most sophisticated bombs but they did pose a
18 danger and they posed a danger to all of the individuals -- the
19 U.S. Postal Service employees, the law enforcement officers,
20 the victims and their families and their colleagues who were in
21 the pathway of each IED.

22 Your Honor, with respect to the risk of recidivism
23 here and the danger that the defendant poses to the public, the
24 government would highlight again that this was not a whim or
25 reaction in one moment in time. It was years and years of

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Sentence

1 hate, of threats and a desire to commit violence. Those are
2 evidenced from messages and social media posts that the
3 defendant posted as far back as 2011. He began to plan for his
4 attack in 2016. His messages included assertions of wanting to
5 kill, to decapitate, to eliminate, and to exterminate.

6 Is it also worth noting, your Honor, once he started
7 mailing these bombs, he didn't stop until he was arrested.
8 After the first IED was recovered, he mailed approximately five
9 to seven additional bombs.

10 Your Honor, we'd also like to point to the defendant's
11 failure to fully accept responsibility. He has tried to walk
12 away from his guilty plea with respect to the WMD counts. He
13 has also tried to argue that he intended to injure property and
14 not people here. The government would submit that this is
15 implausible. There was no way that he would have been able to
16 detonate these bombs just to target property and not people.

17 The defendant has also offered a whole slew of excuses
18 blaming politicians, politics, victims, and the news media.

19 THE COURT: I think on the one hand you're right that
20 like 99.9 percent of the defendants who appear before me, he
21 has excuses or justification aspects for this conduct. On the
22 other hand, I am not particularly impressed neither by the
23 defense arguments that he is now incredibly remorseful.
24 Because there again in 99 percent of the cases I hear at
25 sentencing, Oh, I am so sorry, Judge, and sometimes all it

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Sentence

1 means is I am sorry that I was caught. I don't know that this
2 aspect -- the remorse or lack of remorse -- whether he has
3 fully accepted responsibility or is just partially accepting
4 responsibility should mean much to me. I don't see why that is
5 a rationally significant factor in my sentencing of him. What
6 counts is what he did and what he intended at the time he did
7 it and not what he subsequently said either to me, you, his
8 lawyers or the world.

9 MS. KIM: Your Honor, I think the point there is that
10 the defendant's failure to fully accept responsibility in the
11 government's mind shows that he doesn't appreciate the
12 seriousness of the conduct. His comments that these were hoax
13 devices, decoys, it was just a joke minimizes the national
14 effect of his conduct, which we view to be extremely serious.

15 With respect to some of the excuses that the defendant
16 has advanced about politics and politicians, the government
17 would submit that politics cannot justify a terrorist attack.
18 Politics here cannot justify 16 bombs being mailed.

19 THE COURT: Well, I've already indicated that I think
20 that argument by the defense is something of a sideshow in any
21 event.

22 MS. KIM: Yes, your Honor. One final note on
23 deterrence. As the Court has recognized, the defendant
24 committed these crimes at the age of 57 and it appears that his
25 criminal history has in part in some ways escalated over time.

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Sentence

1 THE COURT: What about the argument that his age is
2 really a mitigating factor? At an absolute minimum, he will be
3 67 when he gets out presuming my acceptance of the defense
4 point of view. Unless you totally dispute the steroid aspect
5 of the case, and I didn't see that you did but maybe I missed
6 that, the likelihood would seem low that he is going to commit
7 new crimes at that point.

8 MS. KIM: Your Honor, I think that there is a point
9 here about general deterrence which the Court raised earlier,
10 and that is that the fundamental nature of the defendant's
11 crime is something that is extremely harmful to the public and
12 to the country. So it is important for this Court to send a
13 message to the public that this type of conduct is
14 unacceptable.

15 THE COURT: That is the general deterrence argument.

16 MS. KIM: Yes, your Honor.

17 THE COURT: That is not where you were going.

18 MS. KIM: Your Honor, I don't know that there is any
19 guarantee if the defendant is released in 10 years that he will
20 not commit another crime or commit other acts of violence.

21 The defendant has self-reported about his steroid use
22 and there is certain things that the experts have testified to
23 and written up in their reports; but I think that a lot of
24 questions still remain unanswered. We don't know what the
25 long-term effects are. We don't know if he would comply with

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1 treatment.

2 THE COURT: Well, you chose, as certainly is your
3 right, not to put in any rebutting expert on this issue. So at
4 this point that doesn't mean I am bound by what the two defense
5 experts say. I have to make my own individual evaluation, but
6 here you have two very well credentialed doctors. One of whom
7 has spent a good deal of his professional career studying
8 steroid use. And I took the liberty of reading some of his
9 earlier studies just because I wanted to see what they were
10 like and I wanted to make sure I could get a good night's
11 sleep, but they do all come out the same way -- that excessive
12 steroid use leads to kinds of psychological impairments that
13 could lead one to violent action.

14 MS. KIM: I think we would have two responses to that.
15 First is that there are many, many people in this country who
16 use steroids and this is, I believe, one of or perhaps the only
17 instance that I am aware of where someone who has self-reported
18 steroid use has then committed a terrorist attack involving 16
19 IEDs. I did not see from the expert's past papers or from his
20 report any sort of indication of what the long-term effects are
21 of steroids. I think that is still my understanding. I think
22 that research is still somewhat unknown. So I think because of
23 those components, there is no guarantee that the defendant
24 wouldn't commit additional acts of violence.

25 I would also note that when he was 40 years old that

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1 is when he threatened to blow up the Florida Power and Light
2 Company.

3 THE COURT: That was over the phone; right?

4 MS. KIM: Yes, your Honor.

5 THE COURT: In a fit of anger over some bill dispute.
6 I don't mean to minimize it in any way, shape or form. I just
7 want to make sure I understand the context.

8 MS. KIM: Yes, your Honor. I don't believe he was
9 using steroids at that time and so I think the point here is
10 that we can't guarantee that he wouldn't continue to commit
11 crimes of this nature or to commit violent crimes.

12 Back to the point of general deterrence, your Honor.
13 We think that it's important for the Court to recognize that
14 the defendant here set out to terrorize people and he set out
15 to silence people who had beliefs that he did not agree with
16 who were government officials or former government officials
17 and he wanted to deter and chill political activity. We
18 believe that that is extremely harmful to the public and to the
19 country and warrants substantial punishment.

20 For all these reasons, your Honor, the government
21 submits that a life sentence is warranted.

22 THE COURT: Thank you very much.

23 I will hear briefly from defense in rebuttal and then
24 I will hear from the defendant if he wishes to be heard.

25 MR. MARCUS-AMELKIN: Your Honor, I don't have a

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1 rebuttal; but if the Court would like, I am certain that if the
2 Court asks Dr. Pope about the long-term effects, he would happy
3 to answer those questions if it will be useful in the Court's
4 sentencing determination.

5 THE COURT: Let's put Dr. Pope back on the stand.

6 The Court reminds you that you are still under oath.

7 THE WITNESS: Yes.

8 THE COURT: So here is what I took from that point the
9 government counsel is making. Some excessive use of certain
10 drugs can alter your brain more less permanently as I
11 understand it. For example, that is one of the reasons that
12 heroin addiction is difficult to cure because it makes
13 permanent changes in your long-term memory and in other aspects
14 of your mental makeup whereas other drugs do not have that
15 effect. They may temporarily derange you, but not permanently.

16 So do you have an opinion and have their been studies
17 as to whether the effects that you've been talking about that
18 steroids cause are permanent or go away or somewhere in
19 between?

20 THE WITNESS: The short answer is the effects go away
21 within a matter of weeks. There is no evidence that I am aware
22 of anywhere in the literature that aggression, irritability,
23 violence -- the types of effects that we have been discussing
24 today -- would persist for any period more than a few weeks
25 after stopping steroids.

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1 THE COURT: Did you want to put any questions to the
2 doctor?

3 MS. KIM: No, your Honor.

4 THE COURT: Thank you very much.

5 (Witness excused)

6 THE COURT: I will hear from the defendant if he
7 wishes to be heard.

8 You don't have to stand up. It is easier if you speak
9 into the microphone.

10 JUROR: Your Honor, Jed S. Rakoff, the government, the
11 court, probation, FBI, the marshals, BOP, my attorneys, and
12 most of all the victims, I am beyond so very sorry for what I
13 did. I am forever thankful to my superwoman mother, my
14 wonderful beautiful sisters, Mr. Ron Louis, my priest Father
15 McGuire, Lisa my God send spiritual advisor for traveling South
16 Florida to be here today, I am so very sorry for what I did and
17 have put you through. I want to thank also my stepfather John,
18 family and friends who have supported me and my superheros in
19 heaven, my grandparents. I am so sorry I am here today.

20 I prepared my speech in writing because I have --
21 because I knew that I would be emotional and forget some of the
22 things that I wanted to say to this Court, the victims, and
23 you, your Honor. I have had a very hard time in life after my
24 dad left my mother, my two sisters and myself and stranded
25 and -- and strand -- and being sexual assaulted at a Catholic

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1 boarding school.

2 I have always had a hard time struggling dyslexia,
3 opiates, PTSD, and my mental health disorders. I have tried to
4 work hard and have a job all my entire life. I have -- I have
5 had so many personal major tragedies that played a severe role
6 in my life and had a very devastating serious effect on my
7 future. This placed me in a deep depression and I began using
8 mass amounts of steroids and drugs.

9 When I read -- when I read what I had wrote online and
10 now being sober and what I had did, I can't believe it what I
11 said. Now that I am a sober man, I know I was a very sick man.
12 I should have listened to my mother, the love of my life. She
13 told me to get help. As she tried to help me, she seen me
14 struggle so very hard but I was in deep denial.

15 Your Honor, I understand now that I have committed a
16 serious crime. I fully accept responsibility. I am so very
17 sorry to all the victims whom I have caused pain and fear. I
18 wish more than anything I could turn back time and take back
19 what I did. But I want you to know, your Honor, with all my
20 heart and soul I feel the pain and suffering of these victims
21 and I will be apologizing to them for the rest of my life.

22 Thank you, your Honor.

23 THE COURT: Thank you very much.

24 The Court will take a no-more-than-10-minute recess to
25 reflect on all that I have heard right now and we will resume

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1 in 10 minutes for sentencing.

2 (Recess)

3 (Continued on next page)

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sentence

1 THE COURT: Since the instant sentence presents
2 difficult and somewhat recurring issues in sentencing, I am
3 setting forth my thoughts in a written opinion, to be read in
4 open court at the time of sentencing after taking account, not
5 only of the voluminous papers submitted by counsel for the
6 respective parties, but also the very helpful presentations
7 made at the sentencing hearing itself which I took a recess to
8 consider before finalizing the opinion.

9 In a nation like the United States, that rightly
10 places such a high value on individual autonomy, it is no small
11 thing to deprive a person of his or her freedom. Prison,
12 moreover, is a harsh environment in which fear and misery are
13 never far from the surface, boredom is endemic, and privacy is
14 nil. Accordingly, the Federal Criminal Code, in the
15 section governing the imposition of sentence requires a
16 sentencing Judge to, "impose a sentence sufficient but not
17 greater than necessary," to fulfill the purposes of sentencing.

18 To achieve this result is no easy task and, in my
19 view, cannot be meaningfully achieved by simply rubber-stamping
20 whatever the Sentencing Guidelines prescribe for a given case.
21 The guidelines deal of necessity with gross generalities, while
22 imposition of a just and fair sentence requires immersion in
23 all the individual fact and circumstances of a particular case.
24 It really comes down to a simple application of the Golden
25 Rule. If any of us had had the misfortune to face sentencing,

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sentence

1 who would we want to be sentenced by? A Judge who primarily
2 focused on the abstract numbers prescribed by a distant
3 Commission, or a Judge who would look carefully at all the
4 particular facts and circumstances of our case?

5 But, here again, the federal criminal code provides
6 helpful guidance. The very first factors it directs a
7 sentencing judge to consider are "the nature and circumstances
8 of the offense, and the history and characteristics of the
9 defendant." Let's consider each in turn.

10 The nature and the circumstances of the instant
11 offenses are, by any measure, horrendous. In late October
12 2018, the defendant mailed 16 improvised explosive devices --
13 commonly called pipe bombs -- to 13 victims around the country.
14 While none of the devices exploded -- a matter I will return to
15 later -- at the very least they were intended to strike fear
16 and terror into the minds of their victims and to intimidate
17 those victims -- mostly prominent political figures -- from
18 exercising their freedom. To this end, each pipe bomb was
19 accompanied by a photo of the intended victim, with a red "X"
20 through the victim's face, an obvious symbol of extermination.
21 Moreover, the defendant included in the pipe bombs not only
22 explosive powder but also chlorine and shards of glass
23 potentially capable of burning and maiming any victim not
24 killed by the putative explosion.

25 In at least three instances involving Joseph Biden,

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sentence

1 Hillary Clinton, and George Soros, the bombs were mailed to the
2 victims' homes, thus conveying the further message that no
3 place was safe from the predator's attacks. Others were mailed
4 to public locations, thus occasioning the shutdown of postal
5 facilities, train stations, and even schools. And,
6 predictably, the mailing of these mail bombs day after day
7 engendered widespread fear among the public generally.

8 So, just who is the human being who perpetrated these
9 horrific acts of domestic terrorism? Cesar Sayoc was himself,
10 it seems, a victim of physical and psychological violence as a
11 child, born with severe learning disabilities but by all
12 accounts eager to please. He was abandoned by his father,
13 sexually abused by a teacher, and bullied by his fellow
14 students. It was to avoid such attacks that he eventually
15 turned to steroids as a body building measure, but his
16 excessive use of steroids only made him more prone to obsessive
17 thoughts and compulsive acts. He, nevertheless, was able to
18 finish high school and even managed a bit of college before
19 dropping out; but thereafter he failed to maintain steady
20 employment and in his impecunious situation, he frequently
21 engaged in petty theft. This, in turn, resulted in various
22 criminal charges, mostly for theft but also including, in 2002,
23 a conviction for making a verbal bomb threat against his
24 electric company which might be viewed, in hindsight, as a
25 portent of worse to come. In any event, Mr. Sayoc,

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1 increasingly isolated from meaningful human interaction, began
2 living alone in a decrepit van, and made ever greater use of
3 steroids. Deprived of any meaningful mental health treatment,
4 his sad existence bore all too great witness to how
5 dysfunctional life, even in our great society, can sometimes
6 be.

7 It is perhaps then not surprising that someone of
8 Mr. Sayoc's emotionally fragile nature not only became
9 infatuated with a public figure -- in this case Donald Trump --
10 but also came to view Mr. Trump's political opponents as demons
11 who were out to destroy not just Mr. Trump but Mr. Sayoc as
12 well. While Mr. Sayoc was never insane in the technical legal
13 sense of that word -- and his lawyers do not contend
14 otherwise -- he clearly became obsessive and paranoid, and it
15 was in this state, made still worse by his steroid abuse, that
16 he decided to commit the crimes for which he is now to be
17 sentenced.

18 Does any of this matter? Should an understanding of
19 the combination of unfortunate circumstances that might cause a
20 troubled person like Mr. Sayoc to commit the horrendous deeds
21 here in issue make any difference to his sentencing? Within
22 modest limits, the law of the United States says, yes, that the
23 personal characteristics, circumstances, and background of the
24 defendant are relevant to sentencing, at least insofar as they
25 help explain in some sense why he did what he did and with what

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1 degree of culpability.

2 One aspect of this is that our criminal law, from time
3 immemorial, has measured the degree to which even the most
4 heinous offenses should be punished by taking account of the
5 defendant's mental state, his "intent," at the time he
6 committed the crime. Thus, even in the case of murder, we make
7 critical distinctions between someone who commits a
8 premeditated murder, someone who commits a murder in the heat
9 of passion, someone who unintentionally causes a victim's death
10 through reckless behavior, and someone whose actions result in
11 a victim's death purely by accident -- and the degree of
12 punishment we mete out in these different circumstances varies
13 accordingly. What this shows is that we, as a society, have
14 concluded that a defendant's intent -- what he meant to do --
15 is as important as his actions, and that we should reserve our
16 most severe punishments for those whose intentions are without
17 any justification or excuse.

18 This does not mean that we can ignore for one moment a
19 defendant's actions or their consequences. Nor does it mean
20 that we can ignore the other important factors that federal law
21 requires a judge to consider in imposing sentence, including
22 the need to protect the public from further crimes of the
23 defendant, the need for more general deterrence of others
24 tempted to commit such crimes, and most broadly the need for
25 the sentence, in the words of the statute, "to reflect the

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sentence

1 seriousness of the offense, to promote respect for the law, and
2 to provide just punishment for the offense." In this case, all
3 those factors support imposition of a lengthy sentence.

4 But, the issue that is most in dispute in this case,
5 and one that, for the reasons already mentioned, ought to and
6 does make a difference, is the issue of Mr. Sayoc's intent. It
7 is common ground between the parties that his pipe bombs were
8 constructed in such a way that though there was an outside risk
9 they might explode, they were quite unlikely to do so. For
10 example, the pipe bombs were controlled by timers that were
11 never set to go off. More generally, in the government's own
12 words, "the fusing, i.e. the wiring on the devices, was
13 inoperable."

14 Was this, as the government argues, simply because
15 Mr. Sayoc was a careless or unskilled pipe bomber whose intent,
16 nevertheless, was to maim or kill his victims? Or, was it as
17 the defense argues, because he never intended to cause physical
18 harm to his victims but rather simply to scare them, express
19 his hatred for them, and intimidate them from acting by
20 exposing their vulnerability?

21 Given Mr. Sayoc's psychological frailties, this is not
22 an easy question to answer. But, I conclude in the end that
23 Mr. Sayoc, though no firearms expert, was fully capable of
24 concocting pipe bombs capable of exploding. Indeed, as the
25 government itself points out, he spent weeks studying YouTube

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1 instructions on how to make an effective pipe bomb. His
2 decision to instead design the pipe bombs so they would not
3 likely explode was, in the Court's view, a conscious choice.
4 He hated his victims, he wished them no good, but he was not so
5 lost as to wish them dead, at least not by his own hand. But,
6 please do not misunderstand. This mitigating factor is just
7 one of many factors that, as already noted, the Court is
8 required by federal law to consider. In this Court's view, it
9 means it would be inappropriate for the Court to impose the
10 very highest sentence available to it -- life imprisonment
11 without parole -- despite the government's ardent arguments for
12 such a sentence. But it by no means follows that, as the
13 defense would have it, the Court should impose the most modest
14 sentence available to it in this case, namely 10 years and one
15 month. Even though, thank God, no one was injured, the crimes
16 were far too horrible to warrant such a relatively lenient
17 punishment.

18 Accordingly, it is the sentence of this Court that the
19 defendant is sentenced to 240 months, that is, 20 years in
20 prison, to be followed by five years of supervised release on
21 the terms and conditions to be specified orally after I
22 conclude my written remarks. Since Mr. Sayoc is 57 years old
23 and since federal law does not permit parole, the
24 likelihood is that Mr. Sayoc, even if he proves to be a model
25 prisoner and qualifies for so-called good time, will be about

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sentence

1 75 years old before he can be released. No one can pretend
2 that this is not, in real terms, substantial punishment but, in
3 the Court's view, it is no more, and no less, than he deserves.

4 Now I will turn now to supervised release. A
5 five-year term of supervised release will be imposed. This
6 will include the mandatory conditions that he not commit any
7 other federal, state or local crime, that he not unlawfully
8 possess a controlled substance, that he cooperate in the
9 collection of DNA, and that within 15 days of his release
10 from imprisonment he will be subject to a drug test, to be
11 followed by at least two periodic drug tests thereafter as
12 determined by the probation office.

13 There will also be imposed the standard conditions 1
14 through 12, they appear on the face of the judgment and will be
15 gone over with the defendant by the probation officer after the
16 defendant begins his period of supervised release.

17 There will also be imposed the following special
18 conditions:

19 First, that the defendant will participate in an
20 outpatient drug treatment program under standard terms and
21 conditions; second, that the defendant will participate in an
22 outpatient mental health treatment program under standard
23 conditions; and third, that the defendant, within 72 hours of
24 his release from prison, will report to the nearest probation
25 office to begin his period of supervised release. And, he will

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1 be supervised by the district of his residence.

2 The only other aspects of sentence are the fine and
3 special assessment. No fine will be imposed because the Court
4 makes the finding that the defendant is not in position to pay
5 any meaningful fine either now or in the foreseeable future.
6 There is, however, a special assessment of \$6,500 that must be
7 paid and it must be paid no later than at the conclusion of his
8 supervised release period.

9 Now, before I advise the defendant of his right of
10 appeal, is there anything else that either counsel wishes to
11 raise with the Court?

12 Anything from the government?

13 MS. KIM: Your Honor, there is an underlying
14 indictment which the government moves to dismiss.

15 THE COURT: Yes. That motion is granted.

16 MR. MARCUS-AMELKIN: Your Honor, we have two matters.
17 The first is that we request he be designated as close to the
18 south Florida area as possible where he can receive both mental
19 health and drug treatment, and if he is able to participate in
20 the Residential Drug Treatment Program. We understand probably
21 he would not receive, necessarily, a benefit to his sentence
22 time but at least he would benefit from that program.

23 THE COURT: Well, I will recommend south Florida,
24 although as you know I can't order that, that's up to the
25 Bureau of Prisons. But, I will recommend it.

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sentence

1 I don't think I will recommend the residential drug
2 treatment program first because, in practical terms, that
3 detracts from the sentence and I think I have already given the
4 lowest sentence I could reasonably give him; and secondly,
5 because according to the two defense experts, at least for now
6 while he may need mental health treatment, he doesn't need drug
7 treatment.

8 MR. MARCUS-AMELKIN: Understood, your Honor.

9 THE COURT: All right?

10 MR. MARCUS-AMELKIN: The second matter I was going to
11 ask is if it is possible for Mr. Sayoc to receive a visitor in
12 the non-contact visiting booth from his mother and sister at
13 the conclusion of the case? Because he has not had a visitor
14 the entire time he has been incarcerated.

15 THE COURT: Well, that can be arranged with the
16 marshals, that's fine with me, but I leave it to their
17 discretion as to whether that is something that can be
18 meaningfully done under these circumstances.

19 MR. MARCUS-AMELKIN: Thank you, your Honor.

20 THE COURT: Mr. Sayoc, you have a right to appeal this
21 sentence. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And if you can't afford counsel for the
24 appeal, the Court will appoint one for you free of charge.

25 Do you understand that?

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sentence

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Very good. Thanks a lot.

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